

FILED

MAY 17 2005

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION



RUBEN J. HORNED EAGLE,

CIV 03-3039

Petitioner,

-vs-

ORDER AND OPINION DENYING
CERTIFICATE OF APPEALABILITY

UNITED STATES OF AMERICA,

Respondent.

TO THE EIGHTH CIRCUIT COURT OF APPEALS:

Petitioner Ruben J. Horned Eagle filed a motion to vacate, set aside, or correct his conviction and sentence. I summarily dismissed the petition upon initial consideration due to procedural default. Petitioner waived, as part of his plea, any right to appeal. He therefore failed to raise the issues on direct appeal, barring petitioner from raising the issues for the first time in a section 2255 habeas corpus proceeding.

Pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. Petitioner did not and has not made a substantial showing of the denial of a constitutional right.

IT IS HEREBY CERTIFIED that there does not exist probable cause of an appealable issue with respect to the Court's order denying petitioner's motion to vacate, set aside or correct his sentence.

Dated this 17th day of May, 2005.

BY THE COURT:



CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 

DEPUTY

(SEAL)